IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2999 of 1989

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANEKBAUG COOPERATIVE HOUSING SOCIETY LIMITED – THROUGH ITS CHAIRMAN - Petitioner(s)

Versus

AGRICULTURAL LANDS TRIBUNAL & MAMLATDAR & 1 - Respondent(s)

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Appearance :

MR JITENDRA M PATEL for Petitioner(s) : 1,
MS MINI NAIR, AGP for Respondent(s) : 1,
Respondent(s) : 2 SERVED ,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 25/07/2007

ORAL JUDGMENT

The petitioner – Manekbaug Cooperative Housing Society Limited (hereinafter referred to as, **“the**

Society”) was constituted in the year 1959. It was registered as such under the Bombay Cooperative Societies Act, 1925 and is deemed to be registered under the Gujarat Cooperative Societies Act, 1963. The Society has preferred the present petition under Article 226 of the Constitution of India to challenge the notice dated 17th January, 1989 issued by the City Mamlatdar, Ahmedabad under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as, **“the Act of 1948”**) for determination of purchase price.

Mr.Patel has submitted that the Society was registered as far back as in the year 1959. The Society purchased part of the land Survey No.162 of village Vasna, admeasuring 1-Acre-27-Gunthas. The said land was converted into non-agricultural land. The said land was divided into sub-plots. Each sub-plot was sold to the respective purchaser. Each such sub-plot has been constructed by the concerned purchaser. Since then, after nearly 30 years, the impugned notice under Section 32G of the Act of 1948 has been issued by the City Mamlatdar at the instance

of the respondent no.2 who claimed to be the tenant in the land in question on the tiller's date. Mr.Patel has submitted that the land in question has been developed for nearly 30 years. The notice issued under Section 32G of the Act of 1948 thirty years after the purchase of the land by the Society is ex-facie bad and illegal and requires to be quashed and set-aside on the grounds of delay and laches. He has further submitted that the said land has been converted into non-agricultural land. The provisions under the Act, therefore, do not apply to the said land. The City Mamlatdar, therefore, had no authority to issue impugned notice under Section 32G of the Act of 1948. Further, neither the respondent no.2 has been declared to be a tenant in the said land by order made under Section 70(b) of the Act of 1948 nor there is order for restoration of the said land to the respondent no.2 under Section 32(1B) of the Act of 1948. In absence of such an order, proceeding under Section 32G of the Act of 1948 is not maintainable. He has also submitted that the proceedings under Section 84(c) of the Act of 1948 initiated by the respondent no.2 has culminated in

the decision of the revenue tribunal in favour of the Society. Therefore also, the impugned notice requires to be set-aside.

Mr.Patel has also submitted that the facts undisputed are : that the grandfather of the respondent no.2 was a tenant in the disputed land. In the year 1955, he surrendered the land in favour of the owner one Manilal Vaghjibhai. The said surrender was recorded by the Mamlatdar on 5th August, 1957. Mutation entry no.659 to record the surrender of the tenancy came to be made on 6th August, 1957.

I do agree with Mr.Patel. It is indisputable that the land in question is a non-agricultural land. The provisions contained in the Act of 1948 do not apply to the said land. As no order either under Section 32(1B) or under Section 70(b) of the Act of 1948 has been made in favour of the respondent no.2, the proceedings under Section 32G of the Act of 1948 for determination of price of the said land could not have been initiated. The impugned notice issued by the Mamlatdar is, therefore, wholly without

jurisdiction.

For the aforesaid reasons, the petition is allowed. The impugned notice dated 17th January, 1989 is quashed and set-aside. Rule is made absolute. The parties will bear their own cost.

(Ms. R.M.Doshit, J.)

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